Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE

UNITED STATES

NO. 75-656

J. NORTON HAAS, JR. APPELLANT

VS.

DOLORES C. HAAS APPELLEE

STATEMENT AS TO

JURISDICTION

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APPEAL FROM THE SUPREME COURT
OF MISSISSIPPI

STATEMENT AS TO JURISDICTION

Appellant, J. Norton Haas, Jr., submits herewith his statement particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the judgment of the Supreme Court of Mississippi in Cause No. 48,119, affirming a Decree of the Chancery Court of Hancock County, Mississippi.

THE OPINION BELOW

The Decision of the Supreme Court of Mississippi was without opinion and has been unofficially reported at 315 So. 2d 447, but it has not yet been officially reported. Since there was no opinion it is not appended.

JURISDICTION

1. This is on appeal from a decision of the Supreme Court of Mississippi affirming a Decree of the Chancery Court of Hancock County, Mississippi rendered on August 23, 1973, ordering payment of past and future alimony payments to Appellee, establishing liens on Appellant's property, and ordering Appellant committed to the custody of the Sheriff if surety bond was not posted by September 1, 1973, to secure payment of future alimony, copy of said Decree attached

hereto as Appendix A.

2. The Supreme Court of Mississippi handed down its decision on July 14, 1975. Appellant's petition for rehearing was denied on August 4, 1975. Notice of Appeal to this Court was filed by Appellant with the Clerk of the Supreme Court of Mississippi on August 18, 1975, and on said date the Supreme Court of Mississippi stayed its mandate and allowed Appellant ninety (90) days to appeal to this Court; copy of said Notice of Appeal attached hereto as Appendix B.

3. The jurisdiction of this Court upon appeal is conferred by 28 U.S.C.A. Sec. 1257(2). Appellant challenges the validity of the "statute of a state" within the meaning of that provision, on the ground that it is repugnant to the Constitution of the United States, and the decision of the highest Court of the state was in favor of its validity.

4. Cases believed to sustain the jurisdiction of this Court on appeal include Williams v. Bruffy, 96 U.S. 176, 183, 24L.Ed. 716; Lake Erie & Western Ry. Co. v. State Public Utilities Commission, 249 U.S. 422, 39 S.Ct. 345, 63 L.Ed. 684; Cities Service Gas Co. v. Peerless Oil and Gas Co., 340 U.S. 179, 181, 71 S.Ct. 215, 217, 95 L.Ed. 190.

5. A copy of the "statute" involved within the meaning of 28 U.S.C.A. §1257(2), is officially reported, as Sec. 93-5-23, Miss. Code of 1972, and reads as follows in Vol. 20, Page 321:

When a divorce shall be decreed from the bonds of matrimony, the Court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody and maintenance of the children of the marriage, and also touching the maintenance and alimony of the wife, or any

allowance to be made to her, and may, if need be, require sureties for the payment of the sum so allowed. The Court may afterwards, on petition, change the decree, and make from time to time such new decrees as the case may require. However, where proof shows that both parents have separate incomes or estates, the Court may require that each parent contribute to the support and maintenance of the children of the marriage in proportion to the relative financial ability of each.

QUESTIONS PRESENTED

1. The Alimony Statute of the State of Mississippi, Sec. 93-5-23, Miss. Code of 1972, upon which the Decree appealed from and affirmed by the Supreme Court of Mississippi, is founded is unconstitutional on its face as being violative of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. The Decree of the Chancery Court of Hancock County, Mississippi appealed from constitutes an unconstitutional application of the Alimony Statute of the State of Mississippi, as being violative of traditional notions of fair play and substantial justice contrary to the Fifth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Appellant and Appellee were formerly married and a Decree of Divorce was entered on February 26, 1971, which provided for various property settlements, etc. and payment of alimony to Appellee in the amount of $250.00 per month.

There were no children born of the union. Thereafter, a Petition was filed by Appellee on September 26, 1972 requiring the Appellant to show cause why he should not be held in contempt of Court for failure to pay the alimony payments required in the divorce decree. Thereafter Appellant, due to extreme financial hardships and complete health failure filed his Answer and Cross Bill denying that he was in contempt of Court and alleging in the Cross Bill that there had been a material change in facts and circumstances both on the part of Appellant and Appellee who had regular income, money in the bank, debt free and opportunity for gainful employment, and praying that the provision in the original Divorce Decree be eliminated so as not to provide any further alimony payments. It was not disputed that Appellant had paid all alimony payments due at the time of the filing of his Cross Bill for relief from alimony payments. The matter was heard before Chancellor Michael J. Carr on August 22 and 23, 1973 and a Decree was rendered by said Chancellor that Appellant was in default in the amount of $2,000.00 alimony payments and further that the alimony payments be reduced to $200.00 per month if Appellant purged himself of contempt. The Decree also provided for establishment of liens and directed the Sheriff to take the Appellant into custody for failure to post bond. From the Decree rendered on August 23. 1973, Appellant prosecuted his appeal to the Supreme Court of Mississippi.

Appellant raised the constitutional questions before the Supreme Court of Mississippi by assignment of errors as follows:

1. The alimony statute upon which the Decree appealed from is founded is unconstitution on its face.

2. The Decree appealed from constitutes an unconstitutional application of the alimony statute of the State of Mississippi.

The Supreme Court of Mississippi failed to pass upon either of these assignments of errors, except merely to affirm the decision of the lower Court without order or opinion on July 14, 1975 and the Petition for rehearing was denied on August 4, 1975.

Appeallant contends that the alimony statute is unconstitutional on its face since it discriminates in favor of the wife solely on the basis of her sex and places the husband in theposition of having to overcome the burden of presumption in her favor. Also, the facts in this particular case clearly show an unconstitutional application of the statute.

GROUNDS AND REASONS FOR SUBSTANTIAL FEDERAL QUESTIONS

A. PRELIMINARY STATEMENT

1. The history of discrimination in Mississippi has always had its foundation in the statute laws of the State of Mississippi. Total segregation of all education was accomplished through the statutory requirements of "separate but equal facilities". An annual poll tax was required as a condition precedent to vote. The law was the foundation for prejudice. This Court removed the legal basis for prejudice under law and barriers of segregation and denial of voting rights has since disappeared in the State of Mississippi. Now the Court is faced with a problem just as important - sex descrimination - against perhaps the largest class of citizens in the history of this

country - husbands.

2. In the State of Mississippi and most of the other states this large class of citizens is denied due process and equal protection of the laws. This class of American Citizen go into American Courts each day with two strikes against them; first, a legal requirement that the husband must support the wife, and second, by virtue of this legal requirement, an atmosphere of prejudice in the Courtroom against husbands as a class because of the alimony laws of the several states.

3. The case before the Court is an example of the atmosphere of prejudice in the Courtroom against husbands. Here the Appellant found himself unable to make the alimony payments ordered by the Court and came into Court in exactly the manner provided by law seeking relief. The reaction of the Court was to slap him down, continue the alimony payments, place liens on his property and committing him to the hands of the Sheriff unless bond was posted to secure all future alimony.

B. DUE PROCESS AND EQUAL PROTECTION

This Court in recent years has jealously guarded the Constitutional rights of citizens in sex discrimination cases of the type before the Court. The development has been so rapid as to cause lower courts to conclude that alimony statues of the type before the Court which, as a matter of law, operate in favor of the female exclusively are unconstitutional on their face. Murphy v. Murphy 232 Ga. 352, 206 S.E. 2d 458 (1974). The refusal of this Court to review this case did not stop the trend. Williams v. Williams, Civil Suit No. 91,718, Ninth Judicial District Court, Parish of Rapides, Louisiana, decided

May 28, 1975, holding a similar statute unconstitutional because it denies married men due process of law and equal protection of the law. Conflicting decisions will continue until this Court renders a clear decision, one way or the other, and there is sound basis for these conflicting decisions of lower courts by reason of rapid developments in this court in recent years in sex discrimination cases of the type before the court, as follows:

1. Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208 (1972) wherein this Court held an unwed father cannot be denied a hearing on his fitness.

2. Vlandis v. Kline, 412 U.S. 441, 93 S. Ct. 2230 (1973) held that the classification cannot be conclusive and irrebutable and requires close judicial scrutiny.

3. Frontiero v. Richardson, 411 U.S. 677, 93 S.Ct. 1764 (1973) conluded that statutes denying increased benefits to female officers accorded male officers are inherently suspect statutory classification based on sex, and so unjustifiably discriminating as to violate due process.

4. Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251 (1971) held that state statute giving preference to men over women for appointment as administrator being based upon sex subjects it to scrutiny under the Equal Protection Clause and concluded it violated same.

5. Kahn v. Shevin, 416 U.S. 351, 94S. Ct. 1734 (1974) held property tax exemption in Florida to widows constitutional.

6. Schlesinger v. Ballard, ___U.S.___95 S. Ct. 572 (1975) allowed different tenure for male and femal naval officers for mandatory discharge.

7. Weinberger v. Wiesenfeld, No. 73-1892 (1975) held denial of social security benefits to

husband which by statute would have been accorded wife unconstitutional.

8. Cleveland Board of Education v. LaFleur, ____U.S.____, 94 S.Ct. 791 (1974) held a school board regulation requiring a pregnant teacher to take an unpaid leave five months before delivery unconstitutional.

Counsel in this presentation will not attempt to demonstrate to the Court the highly confusing justifications of the Court for allowing sex classification in one case and denying same in another case, but suffice it to say that the vast majority of the cases hold such classifications suspect and require close judicial scrutiny. That the state must demonstrate that the classification serves a compelling interest which cannot be achieved in any other manner. Counsel can and will demonstrate upon a full hearing that no such compelling state interest is present here.

The statute before the Court is patently unconstitutional on its face because it arbitrarily, capriciously and unreasonably grants the wife the right to claim alimony and fails to give the same right to the husband, and in the same statute provises that each may be required to contribute to the support of the children of the marriage in proportion to their relative financial ability.

C. UNCONSTITUTIONAL APPLICATION OF STATE ALIMONY STATUTE.

A comparison of the relative positions of Appellant and Appellee is proof positive of the prejudicial atmosphere which any husband encounters in the Divorce Court. Here Appellant had no job or prospect for employment, he was in ill health, had no income, heavily indebted and no assets,

while Appellee was in good health, debt free with regular income more than sufficient to meet her needs, and physically able to seek gainful employment which was readily available to her but chose to obtain a college education which she did not have during the marriage of the parties. The alimony laws were never designed to place such a burden on a husband to pay alimony under these circumstances. To require the Appellant to continue alimony payments under the conditions of this record constitutes an unconstitutional application of the alimony statute. The result in this case is so severe as to offend "traditional notions of fair play and substantial justice", contrary to the Due Process Clause of the Federal Constitution. International Shoe Co. v. State of Washington, 326 U.S. 310 (1945).

CONCLUSION

Appellant respectfully suggests that this appeal brings before this Court federal questions under the Constitution that are far reaching and important, both in terms of legal principle and of practical impact upon the everyday life of our citizens. Husbands will have equal standing before the Courts of the several states if this Court takes affirmative action on this important issue which now affects almost every family in this Country. Counsel respectfully submits that more than enough has been demonstrated showing the questions presented are so substantial and important as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

Nicholas M. Haas

NICHOLAS M. HAAS, Counsel for Appellant - P. O. Drawer UU - Bay St. Louis, Mississippi 39520

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing statement as to Jurisdiction has been served on the Hon. William F. Watkins, Attorney for Appellee, at his address by depositing same in the United States Mail, First Class, postage prepaid. All parties required to be served have been served.

This the 31st day of October, 1975.

Nicholas M. Haas

NICHOLAS M. HAAS

APPENDIX A

IN THE CHANCERY COURT OF
HANCOCK COUNTY, MISSISSIPPI

DELORES C. HAAS BOOK 53 PAGE 578
VS NUMBER 11,253
J. NORTON HAAS, JR.

DECREE

This cause coming on this day, August 22, 1973, to be heard on Petition of Delores C. Haas, personal service of process on the defendant, J. Norton Haas, Jr., Answer and Cross-Bill of the defendant and cross-petitioner, Answer and Amended Answer to the Cross-Bill by the Petitioner and cross-defendant, Delores C. Haas, Certificate of Disqualification by the Honorable Frank W. Alexander, Chancellor of the Eighth Chancery Court District and appointment of Honorable Michael L. Carr, Jr., Chancellor of the Fifteenth Chancery Court District, oral and documentary evidence, and the Court, after hearing and duly considering the same, finds:

That this Court has jurisdiction of the parties and subject matter hereto; and

That a Final Decree of divorce was rendered in this cause on about February 26, 1971, wherein the defendant and cross-petitioner was ordered to pay unto the petitioner and cross-defendant the cash amount of $250.00 per month as alimony; and

That the defendant and cross-petitioner has made no payments of alimony since the month of December, 1972; and

That for the non-payment of said alimony the defendant and cross-petitioner should be adjudged

by this Court to be in contempt of this Court for his failure to fulfill the mandatory orders of this Court stated in the Decree of this Court entered on the 26th day of February, 1971;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that J. Norton Haas, Jr., is in default in the payment of the alimony to Delores C. Haas in the amount of $2,000.00 through the month of August, 1973; that he is in contempt of this Court for having not made said payments, and judgment therefor is hereby entered.

It is further ordered, adjudged and decreed that a lien be, and it is hereby attached and fixed to all of the assets owned by the defendant and cross-petitioner in the amount of $2,000.00 to further secure payment of the past due alimony as well as all future alimony payments.

It is further ordered, adjudged and decreed that the defendant and cross-petitioner, J. Norton Haas, Jr. be, and he is hereby ordered to file with the Clerk of this Court a good and sufficient bond in the penal amount of $1,000.00 securing the punctual payment of all future alimony, and the Clerk of this Court is directed to issue a writ directed to the Sheriff of Hancock County, Mississippi, to take J. Norton Haas, Jr. into custody on September 1, 1973, if on or prior to this date the said J. Norton Haas, Jr. has not posted said bond.

It is further ordered, adjudged and decreed that the defendant and cross-petitioner, J. Norton Haas, Jr., upon purging himself of contempt before this Court and under the decrees of this Court, the decree entered on February 26, 1971, is modified to provide the alimony to be paid is in the sum of $200.00 per month instead of $250.00

per month.

It is further ordered, adjudged and decreed that all cost of this action be assessed against the defendant and cross-petitioner, J. Norton Haas, Jr. for which let execution issue.

ORDERED, ADJUDGED AND DECREED on this, the 23rd day of August, A. D., 1973.

/s/ MICHAEL CARR
CHANCELLOR

FILED

OCT 31, 1973

John D. Rutherford, Jr. Chancery Clerk

By /s/ LILA TAYLOR
D.C.

IN THE SUPREME COURT OF MISSISSIPPI

J. NORTON HAAS, JR. APPELLANT
VS. NO. 48119
DOLORES C. HAAS APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that J. Norton Haas, Jr., the Appellant abovenamed, hereby appeals to the Supreme Court of the United States from the final judgment of the Chancery Court of Hancock County, Mississippi on August 23, 1973 and affirmed by the Supreme Court of Mississippi on August 4, 1975.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in said transcript all records of the proceedings, including the pleadings, transcripts and orders on file in the Supreme Court of Mississippi concerning said cause.

III. The following questions are presented by this Appeal:

1. The Alimony Statute of the State of Mississippi, Section 93-5-23, Miss. Code of 1972, upon which the Decree appealed from and affirmed by the Supreme Court of Mississippi, is founded is unconstitutional on its face as being violative of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. The Decree of the Chancery Court of

Hancock County, Mississippi appealed from constitutes an unconstitutional application of the Alimony Statute of the State of Mississippi as being violative of traditional notions of fair play and substantial justice contrary to the Fifth Amendment to the Constitution of the United States.

Respectfully submitted,
J. NORTON HAAS, JR.

By: /s/ NICHOLAS M. HAAS
NICHOLAS M. HAAS
Attorney for Appellant
P. O. Drawer UU
Bay St. Louis, Mississippi 39520

CERTIFICATE OF SERVICE

I, Nicholas M. Haas, of counsel for Appellant, hereby certify that I have this day mailed by U. S. Mail, postage prepaid, a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, to Hon. William F. Watkins, Statham & Watkins, Attorneys at Law, P. O. Box 230, Magnolia, Mississippi 39652, counsel for Appellee.

This the 14th day of August, 1975.

/s/ NICHOLAS M. HAAS
NICHOLAS M. HAAS

F I L E D, Aug. 18, 1975
(Mrs.) Julia H. Kendrick, Clerk
Supreme Court of Miss.